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No. 17

# In the Supreme Court of the United States

OCTOBER TERM, 1951

THOMAS P. McMAHON, PETITIONER

*v.*

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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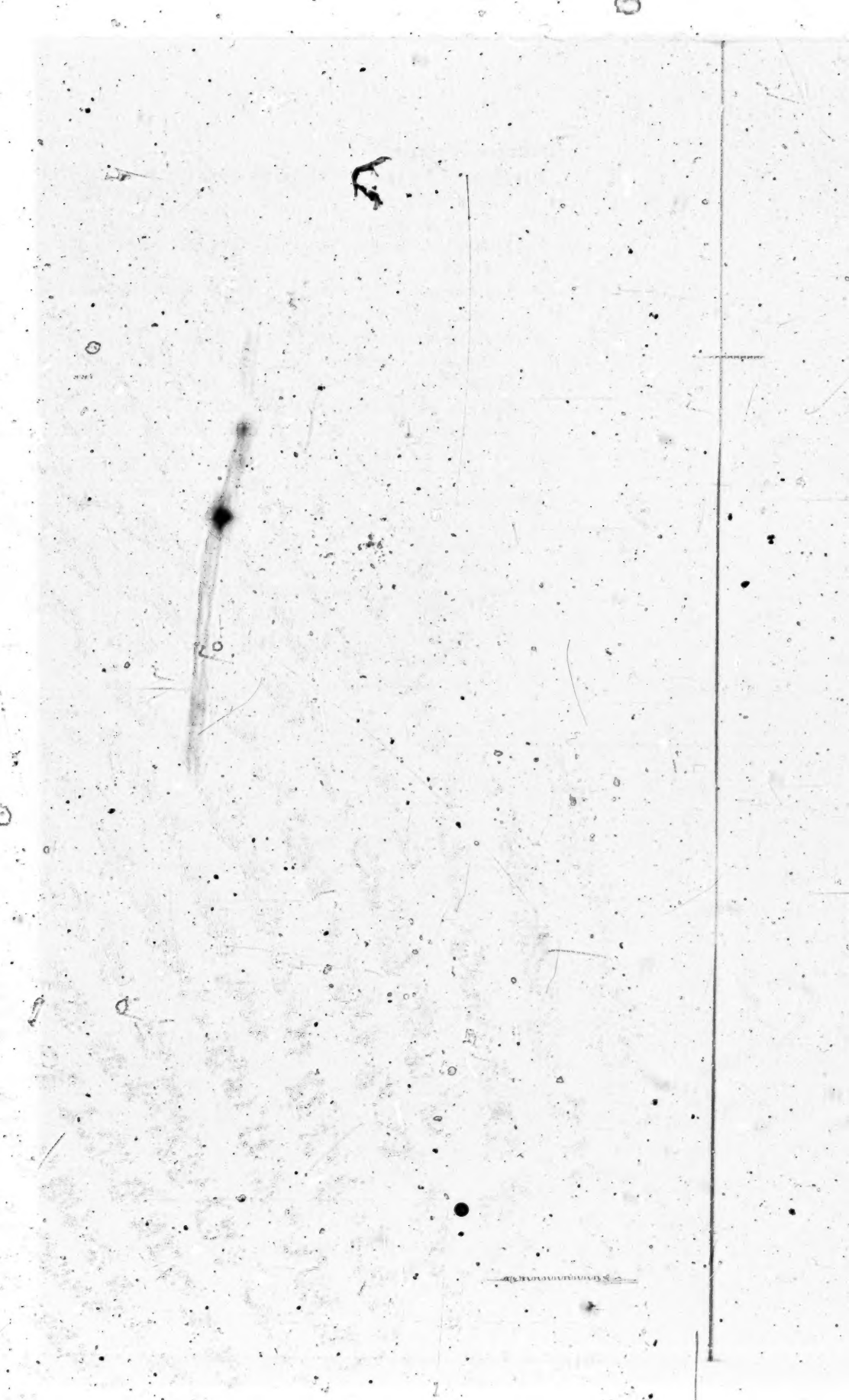
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## BRIEF FOR RESPONDENTS

### OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 8–10) is reported at 91 F. Supp. 593. The opinion of the United States Court of Appeals for the Third Circuit (R. 13–18) is reported at 186 F. 2d 227.

### JURISDICTION

The judgment of the Court of Appeals was entered on December 28, 1950 (R. 18–19). The petition for a writ of certiorari was filed on March 13, 1951, and granted on May 14, 1951

(R. 19). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Whether, in an action brought against the United States under the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. 741 *et seq.*), pursuant to Section 1 (a) of the Clarification Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291 (a)), the statute of limitations begins to run at the time of injury to the seaman or upon the administrative disallowance of the claim.

## STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the War Shipping Administration (Clarification) Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291 (a)), of the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741–752), and of General Order 32 of the Administrator, War Shipping Administration (8 F. R. 5414, 46 CFR §§ 304.20–304.29), are set forth in the Appendix, *infra*, pp. 28–34.

## STATEMENT

On January 22, 1948, petitioner filed a libel in admiralty (R. 2–4) against the United States of America and the Maritime Commission alleging that in November 1945, during his employment on the S. S. *John Sherman*, a vessel owned and operated by the War Shipping Administration, he contracted a skin condition and that in De-

cember 1945, while on shore leave in France, he was assaulted, suffering injuries to his nose and shoulders. He asked for $15,000 damages and maintenance and cure.

Respondents moved to dismiss the libel on the ground, *inter alia* (R. 5–6), that the cause of action had arisen more than two years before the libel was brought (Suits in Admiralty Act, Sec. 5; 46 U. S. C. 745, *infra*, p. 30).[1] The decision of the district court (R. 8–10) passed only on the issue of limitations and dismissed the libel because it had been brought more than two years after plaintiff had suffered his alleged injuries[2] (R. 10). Petitioner appealed to the United States Court of Appeals for the Third Circuit[3]

[1] Respondents also contended that the libel failed to allege that petitioner had submitted his claim for administrative determination and that his claim had been disallowed. After oral argument on the motion to dismiss (R. 1), petitioner's attorney filed a copy of a letter of the Government's general agent dated April 17, 1946 (R. 6–7), for the purpose of supplying this missing jurisdictional statement. This letter was accepted by both courts below as establishing the submission and disallowance of the claim as required by the statute and regulation. The other asserted ground of dismissal—lack of consent to suit against the Maritime Commission—would not affect the right to proceed against the United States.

[2] The motion to dismiss was denied with respect to items not significant here, *viz*, maintenance and cure subsequent to January 22, 1946, and damages for failure to provide maintenance and cure after January 22, 1946.

[3] The order of the district court was appealable although it disposed of less than the entire libel (28 U. S. C. 1292 (3)).

which affirmed the order of the district court (R. 13–18; 186 F. 2d 227).

## SUMMARY OF ARGUMENT

Section 1 (a) of the Clarification Act gives to government-employed merchant seamen the same rights against the United States for death or injuries as privately employed seamen have against their employers. The Act further provides that such claims, if administratively disallowed, shall be enforced against the United States under the Suits in Admiralty Act. Section 5 of the latter Act limits the jurisdictional grant to suits brought within two years after the cause of action arises. Here, suit was commenced more than two years after the injury allegedly occurred and petitioner's substantive cause of action accrued, but less than two years after the claim had been administratively denied. The question in the case, therefore, is whether the cause of action "arises" at the time of the injury or only upon the denial of the claim. The court below correctly decided that the cause of action dated from the injury for all purposes and that petitioner's suit therefore was barred by limitations.

## I

The Court of Appeals for the Second Circuit in *Gregory* v. *United States*, 187 F. 2d 101, and the Court of Appeals for the First Circuit in

*MacInnes* v. *United States*, 189 F. (2d) 733, agree with the view of the court below. Their opinions accord fully with the reasoning of *Reading Co.* v. *Koons*, 271 U. S. 58, where this Court, in dealing with the limitation provisions of the Federal Employees Liability Act, held that the cause of action arose at the time of the injury and not when the claimant was first able to bring suit. The expression "when a cause of action arises" is not a static concept to be applied mechanically but can vary with the function which is to be served in a particular situation. *United States* v. *Dickinson*, 331 U. S. 745, 748; *Reading Co.* v. *Koons, supra.* The *Koons* case pointed out that the proper approach to a problem of this character is to examine the general purpose and practical ends to be achieved by the statute, and in particular by its limitation provisions. In the light of the rationale of that case, the decision below, as well as those of the First and Second Circuits on the same question, is clearly correct.

The scheme of the Clarification Act providing for the submission of a written claim based on an existing substantive cause of action to the administrative authority was intended solely to afford opportunity for administrative disposition without suit and not to extend the time to sue in excess of the two years from the injury already provided by the Suits in Admiralty Act. A plain reading of the Act, the committee reports thereon,

and the regulations adopted by the Administrator demonstrates that this was clearly the purpose.

The classical aim of statutes of limitations is to put an end to litigation. That purpose would be defeated if a claimant were permitted to postpone the time from which the statute would run. Where the substantive cause of action accrues and the Government's liability is fixed, as here, at the time of the injury, the purpose of the limitations provision would be frustrated if its commencement could be indefinitely postponed by a claimant through the device of refraining from presenting his administrative claim. Yet, if his cause of action did not arise within the meaning of Section 5 of the Suits in Admiralty Act until his claim had been rejected, he would be in a position at least to double the two-year limitation time. We submit that the provision of the Clarification Act, requiring a claimant to submit his claim for administrative disposition before enforcing it by suit, envisaged no such result. The decision below meets all the tests laid down by this Court in the *Koons* case and, accordingly, should be affirmed.

## II

Petitioner has made no contention that the statute of limitations is tolled during the pendency of an administrative claim. Such a contention could not avail him, since the record is bare of allegation or proof as to the period during which his claim was pending. In any

event, there is no support in the statute or in general principles for such a tolling theory.

## ARGUMENT

Section 1 (a) of the Clarification Act[4] gives to seamen, employed by the United States on government-owned merchant vessels, the same rights against the United States with respect to "death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation" and "collection of wages and bonuses and making of allotments", which seamen employed on privately owned and operated American vessels have against the owners thereof. The Act provides that "any claim" of the kinds just referred to shall, "if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act." The Clarification Act further provides that "the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration." The statutory scheme was designed to permit settlement prior to suit; it is necessarily based on the theory that a cause of action accrued prior to the denial of the claim, and not that it arises only upon an administrative determination which is to be reviewed by the courts.

[4] Act of March 24, 1943, 57 Stat. 45, c. 26, 50 U. S. C. App. 1291 (a).

Section 5 of the Suits in Admiralty Act, as it stood when this libel was filed, imposes the following limitation upon the grant of jurisdiction for suit against the United States:[5]

> That suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided,* That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises

Such provisions have always been held to mean two years from the injury. *Moore* v. *Atchison, Topeka & S. F. R. Co.,* 187 Okla. 534; Restatement of the Law of Torts, Sec. 899, Comment c.

Petitioner was allegedly injured during November and December 1945, and his administrative claim was denied April 17, 1946. At any date thereafter he could have brought suit, but he delayed doing so until January 22, 1948, more than twenty-one months after the administrative denial and more than two years after his alleged injuries. Thus, the question for decision is whether a libelant's cause of action "arises" under the Suits in Admiralty Act, within the meaning of Section 5, when his alleged injuries occur and his substantive cause of action accrues, or only there-

[5] Act of March 9, 1920, c. 95, 41 Stat. 525, 526, 46 U. S. C. 745.

after when his claim has been administratively denied. If the former, more than two years have here elapsed between the time the cause of action arose and the time the suit was brought and the suit was therefore barred by limitations. If, on the other hand, the cause of action did not "arise" from the injury but only from the administrative denial, the suit was brought within the two-year period and was timely.

The court below, together with Courts of Appeals for the First and Second Circuits,[6] has held that the "cause of action" arises for limitation purposes when petitioner suffered his injuries and thus acquired his substantive cause of action, although as a procedural prerequisite he had to give notice in order to afford an opportunity for administrative settlement before he could maintain suit. Petitioner's argument, supported by the decision of the Ninth Circuit in *Thurston* v. *United States*, 179 F. 2d 514, is that a "cause of action" does not "arise" until a court may immediately give judgment upon it. We submit that petitioner's contentions, and the *Thurston* case upon which he founds them, are unsound as contrary to the statutory theory that a substantive cause of action exists prior to the denial of claim. Accordingly, the court below, in common with the First and Second Circuits, correctly answered the question.

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[6] *Gregory* v. *United States*, 187 F. 2d 101 (C. A. 2); *MacInnes* v. *United States*, 189 F. 2d 733 (C. A. 1).

## I

### THE STATUTE OF LIMITATIONS BEGAN TO RUN WHEN PETITIONER ALLEGEDLY SUFFERED INJURIES, NOT WHEN HIS CLAIM WAS ADMINISTRATIVELY DENIED

A. *Petitioner's substantive rights became fixed, and his cause of action arose, on the date of the alleged injuries.*—The court below in the instant case, as well as the Court of Appeals for the Second Circuit in *Gregory* v. *United States*, 187 F. 2d 101, and the Court of Appeals for the First Circuit in *MacInnes* v. *United States*, 189 F. 2d 733, concluded that the statutory scheme for affording a seaman relief by suit against the United States for injuries sustained as a result of his employment was to provide him with a period of two years from the date of injury within which to bring suit. The one restriction upon his right to prosecute suit is that within the two years he is required to give notice of his claim to the administrative agency so as to afford that agency an opportunity to effect an administrative settlement and thus avoid suit. The statutory scheme, as implemented by the regulations, confines the time for administrative consideration to a maximum of 60 days.[7] Thus

[7] The Clarification Act defines the term "administratively disallowed" as meaning a "denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration" (Appendix, p. 29, *infra*). Section 304.26 of General Order 32 of the War Shipping Administration (Appendix, p. 33, *infra*) provides

if the seaman chose he might wait until at least 61 days before the two-year limitation expired, file his claim and, if it were not acted upon favorably, commence suit on the last day of the two-year period. Cf. *Manderscheid* v. *United States,* 88 F. Supp. 232, 234 (N. D. Cal.). Or he could file his notice almost immediately after his substantive cause of action accrued and have approximately twenty-two months within which to sue.

The substantive cause of action arises at the time of the injury, as three courts of appeals have held, and because the only jurisdiction for suit against the United States is that afforded by the Suits in Admiralty Act, the suit must, by reason of Section 5 of that Act, be brought within two years from that date. Failure so to do, these courts hold, precludes recovery as no jurisdiction exists under the Suits in Admiralty Act to entertain suit more than two years after the injury occurred. The rationale of those holdings follows that of this Court in *Redding Co.* v. *Koons,* 271 U. S. 58. There the question was whether, in a death action brought under the Federal Employers' Liability Act, 35 Stat. 65 (45 U. S. C. 51–56), the cause of action arose at the time of the injury or only upon the appointment of an administrator who could bring

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that if the claimant has not been notified in writing of administrative action taken on his claim within 60 days after it was filed "the claim shall be presumed to have been administratively disallowed, and the claimant shall be entitled to enforce his claim by court action."

suit. As in the present situation, there was a diversity of views in the lower courts. It was argued in support of one view that, as suit could not be brought until an administrator was appointed, no cause of action arose until such appointment. The other view was that, when all the events which determined the liability had occurred, the cause of action arose or came into existence for limitation as well as other purposes even though judicial proceedings could not be brought until some additional action had been taken by the plaintiff which gave standing to sue (p. 61). In the *Koons* case this Court, concluding that the statutory word "accrued" was susceptible of such a variety of meanings that it afforded no answer to the question, held that the problem must be resolved by a practical approach. Pointing out that the interested claimants (wife, child, etc.) could procure the appointment of an administrator within the period of limitations, it said (pp. 62–63):

> Thus, at the death of decedent there are real parties in interest who may procure the action to be brought; and there are no such practical inconveniences or necessary delays as would lead to the conclusion that the word "accrued," as used in the statute, cannot be taken to refer to the time of death.

On the other hand, it found that serious practical inconveniences would result from the view that the time when the statute began to run was

dependent on some action of the claimants. It said (pp. 64–65):

> Every practical consideration which would lead to the imposition of any period of limitation, would require that the period should begin to run from the definitely ascertained time of death rather than the uncertain time of the appointment of an administrator. * * * No reason appears, if the opinion of the court below is followed, why the time might not have been extended indefinitely by the failure to apply for administration. The only persons who can procure the appointment of an administrator are ordinarily spouse, next of kin, or creditors of the decedent. Certainly the common carrier would have no standing to make the application. The very purpose of a period of limitation is that there may be, at some definitely ascertainable period, an end to litigation. If the persons who are designated beneficiaries of the right of action created may choose their own time for applying for the appointment of an administrator and consequently for setting the statute running, the two-year period of limitation so far as it applies to actions for wrongful death might as well have been omitted from the statute. An interpretation of a statute purporting to set a definite limitation upon the time of bringing action, without saving clauses, which would, nevertheless, leave defendants subject indefinitely to actions

> for the wrong done, would, we think, defeat its obvious purpose. There is nothing in the language of the statute to require, or indeed to support, such an interpretation.

The considerations which led this Court to hold that the statutory period under Federal Employers' Liability Act begins to run upon the happening of the accident, and not upon the performance by the plaintiff of a procedural prerequisite, apply with even greater force to cases arising under the Clarification Act. Thus, the latter present more serious evidentiary problems. In cases involving the Federal Employers' Liability Act where the accident is near at hand and the defendant usually knows of it, is able to investigate it, to preserve the evidence, and to keep track of the witnesses. Admiralty claims, on the other hand, arise in the four corners of the world, with ensuing dissipation of evidence; they are not confined to those arising on board ship, as is illustrated by petitioner's count based on an alleged assault in a French port. Moreover, the giving of a simple written notice of claim, required by the Clarification Act, is far less onerous and time-consuming than procuring the appointment of an administrator.

B. *The meaning of the expression "a cause of action arises" is here to be determined by the general purpose and practical ends of the statute.*—Petitioner's entire case is bottomed upon the proposition that the phrase "cause of action arises," imports a technical and inflexible con-

cept, which can be applied mechanically. Thus he urges that the "basic fundamental element" of a "cause of action" is the right to an immediate judicial recovery (Br., pp. 5–8). And he insists that the "language of the Suits in Admiralty Act and the Clarification Act is clear, plain and unambiguous. There is no need, therefore, to resort to construction or conjecture" (Br., p. 8). But this Court has pointed out repeatedly the dangers inherent in the method of solving legal problems by a mechanical application of the concept of "cause of action" without giving proper effect to its shifting meanings. Thus, it said in *United States* v. *Dickinson*, 331 U. S. 745, 748:

> One of the most theory-ridden of legal concepts is a "cause of action." This Court has recognized its "shifting meanings" and the danger of determining rights based upon definitions of a "cause of action" unrelated to the function which the concept serves in a particular situation. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67 *et seq.*[8]

[8] In the *Memphis Cotton Oil* case, this Court admonished: "The analogy [to the concept "cause of action"] is helpful, yet it will confuse, instead of helping, if we do not insist at the beginning upon a definition of our terms or at least a recognition of their shifting meanings. A 'cause of action' may mean one thing for one purpose and something different for another. It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or the application of the principle of *res judicata*. * * *

And in the *Koons* case, this Court rejected petitioner's type of approach as a solution of the problem, observing (at pp. 61–62):

> We do not think that it is possible to assign to the word "accrued" any definite technical meaning which by itself would enable us to say whether the statutory period begins to run at one time or the other; but the uncertainty is removed when the word is interpreted in the light of the general purposes of the statute and of its other provisions, with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought.

The proper inquiry in this case, therefore, is to determine the purpose of the notice provisions and the practical ends to be served by the statute of limitations.

C. *The sole purpose of the notice provisions here is to avoid unnecessary litigation, not to extend the time within which an action may be brought*—The Clarification Act (*infra*, pp. 28–30) permits enforcement by suit against the United States after a written claim has been denied according to the rules and regulations prescribed by the Administrator of the War Shipping Administration. These regulations provide for the filing of an informal claim (46 CFR § 304.24,

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This court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed." See also *Gully* v. *First National Bank*, 299 U. S. 109, 117.

*infra*, pp. 32–33)[9] without, however, prescribing the time within which this has to be done. This claim is presumed to have been disallowed unless the claimant is notified within sixty days of a determination upon the claim (46 CFR §.304.26, *infra*, p. 33). The committee reports on the bills which became the Clarification Act stated the purpose of the notice requirement to be:

> To prevent unnecessary or premature litigation against the United States, it is required that before suit there shall be an administrative disallowance of the same in accord with rules or regulations to be prescribed by the Administrator, War Shipping Administration.[10]

This passage from the committee reports shows that the purpose of the notice requirement of the Clarification Act is solely to facilitate the settlement of claims without litigation.[11] The statutory

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[9] The filing requirement has been construed very leniently by the Courts. All the merchant seaman has to do is to identify himself and to give a summary statement of the facts upon which he bases his claim. *McInnis* v. *United States*, 152 F. 2d 387 (C. A. 9); cf. *Rodincisc* v. *United States*, 175 F. 2d 479, 481 (C. A. 3), certiorari denied, 338 U. S. 895.

[10] H. Rep. 2572, 77th Cong., 2d Sess., p. 14; H. Rep. 107, 78th Cong., 1st Sess., p. 21; S. Rep. 62, 78th Cong., 1st Sess., p. 14.

[11] A statement of the underlying considerations may be found in the leading case of *Dickinson* v. *Mayor, etc. of New York*, 92 N. Y. 584, 590: "The intent and purpose of section 103 of the charter [requiring the giving of notice of claims and providing for a waiting period] was mainly to enable the comptroller to settle claims against the city and thereby to *save unnecessary costs and expenses in the litigation which*

scheme envisages administrative settlement of the seaman's claim prior to the bringing of any suit. It therefore assumes that governmental liability arises before the denial of the claim and that the claimant has a substantive cause of action prior to notice and denial, which cause of action is the very basis upon which his administrative claim rests. It follows that a statute of limitations commencing to run from the date when the cause of action arises begins to run from the same time that it would if no such notice and denial were required; that is to say, the statute commences to run from the time when the wrong complained of was done and the substantive cause of action accrues; not from the time of the notice and denial. Cf. *Litchfield* v. *M'Donald*, 35 Minn. 167, 168; *People* v. *California Safe Deposit Company*, 41 Cal. App. 727, 731.

A claimant neither sues upon a substantive right created by an administrative adjudication nor appeals to the courts from an adverse admin-

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*must ensue. We think it was not intended to indefinitely extend the time* in all cases within which an action might be brought against the city and thus put in the power of the claimant to delay, without any limitation whatever, * * *. The statute was for the benefit of the city not for the benefit of the claimant. *It was not designed to repeal the statute of limitations as to the city.* * * *." [Italics supplied.] This line of reasoning has been followed in other jurisdictions. *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427, 430; *Wilson* v. *Weber County*, 100 Utah 141 (overruled on another ground in *Shea* v. *State Tax Comm.*, 101 Utah 209); *Young* v. *City of Seattle*, 30 Wash. 2d 357, 365.

istrative determination. The considerations underlying cases such as *Woods* v. *Stone,* 333 U. S. 472; *Cope* v. *Anderson,* 331 U. S. 461; *Fisher* v. *Whiton,* 317 U. S. 217; *Rawlings* v. *Ray,* 312 U. S. 96, are therefore inapplicable.[12]

There is no indication whatsoever that Congress inserted the notice provision in order to give the merchant seaman a means to postpone the running of the statute of limitations. In *Thurston* v. *United States,* 179 F. 2d 514, 515 (C. A. 9), the court suggested that "such legislation in favor of seamen must be construed strongly in their favor," that, therefore, the statute of limitations did not begin to run until the seaman's claim was denied, and that Congress intentionally empowered the claimant to postpone the running of liimtations because "it well may be that an apparently slight injury may not develop into a serious disqualification in the seaman's service

[12] For this reason, among others, we believe the position taken here is wholly consistent with our position in *United States* v. *Lance, Inc.*, No. 293, and *United States* v. *Lovknit*, No. 294, now pending on petitions for writs of certiorari. Those cases arise under a different statute, having a different structure and presenting wholly different practical considerations. For instance, Walsh-Healey Act violations, unlike ordinary torts, are not self-revealing and there is normally no basis for suit until after an administrative investigation and determination has been made. Moreover, in those cases the cause of action was in fact based on a precedent administrative decision, and the suit was brought to enforce that decision. (See Pet. in No. 293, pp. 16–23.)

till many months after he is hurt."[13] But there is nothing in the legislative history of the Clarification Act tending to show that it was the purpose of the filing provisions to depart from the firmly established rule that in tort cases the statute of limitations begins to run at the time of the accident, and not only when the full extent of the injuries can be ascertained. *Moore* v. *Atchison, Topeka & S. F. R. Co.*, 187 Okla. 534; Restatement of the Law of Torts, Sec. 899, Comment c.

D. *The purpose of a statute of limitations—to put an end to litigation—would be defeated if claimants could delay the time when it begins to run.*—Statutes of limitations are statutes of repose. Their purpose is to benefit defendants and the courts by bringing an end to litigation and by precluding the trial of an issue at a time when the evidence has become stale. It would defeat "those practical ends which are to be served by any limitation of the time within which an action must be brought" (*Reading Co.* v. *Koons*, 271 U. S. 58, 62) if a plaintiff could prevent the statute from running by delaying to perform a condition

[13] The court below pointed out that the rule of liberal construction for seamen's claims, relied upon in the *Thurston* case, collided head on with the presumption of strict construction where a waiver of sovereign immunity to suit was involved and logically concluded that the one cancelled out the other. It then proceeded realistically to examine the statute as written, without resort to artificial presumptions, and concluded that the entire statutory scheme compelled the holding that limitations ran from the date of the injury.

which he and he alone can fulfill."[14] This Court held, accordingly, in *Reading Co.* v. *Koons,* 271 U. S. 58, 65:

> The very purpose of a period of limitation is that there may be, at some definitely ascertainable period, an end to litigation. If the persons who are designated beneficiaries of the right of action created may choose their own time for applying for the appointment of an administrator and consequently for setting the statute running, the two-year period of limitation so far as it applies to actions for wrongful death might as well have been omitted from the statute. An interpretation of a statute purporting to set a definite limitation upon the time of bringing action, without saving clauses, which would, nevertheless, leave defendants subject indefinitely to actions for the wrong done, would, we think, defeat its obvious purpose.

Similar results were reached in respect of comparable notice provisions in War Risk Insurance litigation. *United States* v. *Sligh,* 24 F. 2d 626, 638 (C. A. 9), vacated after amendment of the statute, 277 U. S. 582; *Wilson* v. *United States,* 70 F. 2d 176, 179 (C. A. 10).

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[14] "Its [the statute of limitations] real practical effect in any specific case is to protect the alleged debtor or party defendant. It seems obvious that he should not be deprived of this protection by anything the plaintiff has done or failed to do." *Green* v. *Loper,* 67 Atl. 2d 856, 858 (Sup. Ct. Del.).

Other courts, through the same or different formulations, have reached the same result. Thus, in *Woollomes* v. *Gomes,* 26 Cal. App. 2d 461, 466, and in *Palmer* v. *Palmer,* 36 Mich. 487, 494, the courts pointed out that a cause of action has accrued when the only obstacle to the immediate filing of a complaint is one entirely within the control of the plaintiff—*i. e.*, that the plaintiff has to give notice to the debtor and wait a limited period of time. In *Dodson* v. *Continental Can Co.,* 159 Wash. 989, 597, it was considered the salient factor that the plaintiff was "capable of setting the law in motion," not that he could immediately file a complaint and recover. *Fuller* v. *State Highway Comm.,* 140 Kan. 558, 561, and *Wilson* v. *Weber County,* 100 Utah 141, 148, hold that the compliance with a notice requirement is not a part of the cause of action but merely a procedural step in the remedy.[15]

A classic formulation of the rule is found in *Swing* v. *Barnard-Cope Mfg. Company,* 115 Minn. 47, 50:

> Strictly speaking, the right to bring suit did not exist until thirty days after this

[15] The argument that the merchant seaman should not be permitted indefinitely to postpone the running of the statute of limitations is not idle speculation. In *Gregory* v. *United States,* 187 F. 2d 101 (C. A. 2), and *MacInnes* v. *United States,* 189 F. 2d 733 (C. A. 1), the claims were filed 5 and 2½ years, respectively, after the injuries allegedly had been suffered.

> notice. But plaintiff admits, and it is clearly the law, that the receiver could not by postponing the notice, extend the time within which he might bring the action, and thus practically annul the statute of limitations. * * * The time within which an action must be commenced begins to run when the cause of action accrues. It does not necessarily follow that the right to sue on the cause of action arises immediately when the cause of action accrues. It may be necessary to obtain leave of court, to make a demand, or to give a notice before suit can be brought on the cause of action; but where such a condition precedent is not a part of the right or cause of action, but merely a part of or one step in the remedy, it does not delay the running of the statute.

See also *Wittman* v. *Board of Police Commissioners of San Francisco,* 19 Cal. App. 229, 231; *Schriber* v. *Richmond,* 73 Wis. 5, 10–11; *Grenada County* v. *Nason,* 174 Miss. 725, 732; *State* v. *Piedmont & N. Ry. Co.,* 186 S. C. 49, 56–59.

Taking into consideration the purpose of the notice provisions of the Clarification Act and the general purpose of any statute of limitations, and applying the test set up in the *Koons* case, *supra,* at p. 16, it appears that for the purposes of Section 5 of the Suits in Admiralty Act petitioner's cause of action "arises" when he suffered the injuries and his substantive cause of action there-

by accrued, and not at the later date when his claim was administratively denied.

## II

### THE STATUTE OF LIMITATIONS, HAVING BEGUN TO RUN WHEN PETITIONER SUFFERED HIS INJURIES, WAS NOT SUSPENDED PENDING ADMINISTRATIVE DETERMINATION

In *MacInnes* v. *United States,* 189 F. 2d 733, the Court of Appeals for the First Circuit suggested that the result of the *Thurston* case might be sustained on the theory that the statute of limitations was tolled during the pendency of the administrative claim. Petitioner has at no time made any such contention here. Nor would such a contention avail him on this record. Where, as here, the libel shows on its face that it was filed more than two years after the date of the injury, established principles of pleading and practice require that libellant plead facts taking his case out of the bar of limitations. Petitioner wholly failed to make any allegation as to the length of time his claim was pending. The most that appears is a letter, introduced after argument on the motion to dismiss, which is dated April 17, 1946, and refers to prior correspondence going back to April 12, 1946 (R. 1, 5–7). The date of petitioner's injuries is loosely alleged as "in or about November, 1945" and "in or about December, 1945" (R. 3). Taking these allegations most favorably to petitioner, the two year period as to

the most recent injury expired on December 31, 1947, and, even on the tolling theory, his libel, filed January 22, 1948 (R. 2), could become timely only if the claim was pending for at least 22 days. Proof of correspondence extending over a period of five days—from April 12 to 17—plainly failed to establish such pendency.

In any event, we think the tolling theory is untenable. Once limitations have begun to run, disability to sue will not suspend their operation unless the statute expressly provides to the contrary. *Bauserman* v. *Blunt*, 147 U. S. 647, 657, and authorities there cited; *DeArnaud* v. *United States*, 151 U. S. 483, 496; *Nathan* v. *Equitable Trust Co.*, 250 N. Y. 250, 256–257; *Whitehurst* v. *Duffy*, 181 Va. 637, 642; 6 Williston on Contracts (Rev. Ed.) Sec. 2012; *Developments in the Law—Statutes of Limitations*, 63 Harv. L. R. 1177, 1229–1230 (1950). The Clarification Act made no such provision.[16] It follows that a waiting period cannot be taken into account in computing the period of limitations. *Rodinciuc* v. *United States*, 175 F. 2d 479, 481, certiorari denied, 338 U. S. 895; cf. *Manderscheid* v. *United States*,

[16] Some federal statutes (Act of May 29, 1928, 45 Stat. 964, 38 U. S. C. 445, par. 2 [claims for servicemen's life insurance], 28 U. S. C. 2401 (b) [Federal Tort Claims] and state statutes (cf. *Brehm* v. *Mayor etc. of New York*, 104 N. Y. 186, *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427, and *Young* v. *City of Seattle*, 30 Wash. 2d 357) expressly provide that the statute of limitations shall not run during the waiting period.

88 F. Supp. 232, 234 (N. D. Calif.). There is nothing unusual in this result. As this Court pointed out in *Reading Co.* v. *Koons*, 271 U. S. 58, 65, the purpose of the limitation provision in this type of legislation is not so much to furnish the claimant with a specified number of days [17] within which he may file his libel, as to terminate the statutory liability *at a definitely ascertainable date*. See *Pope* v. *McCrady Rogers Co.*, 163 F. 2d 591, 592 (C. A. 3). Thus, it has been held consistently that an injunction against the filing of suit issued under the Limitation of Liability Acts (R. S. 4281–4289, as amended, 46 U. S. C. 181–189, and Admiralty Rule 51) does not suspend the running of the statute of limitations. *In re Oceanic Steam Navigation Co.*, 204 Fed. 260 (C. A. 2); *The Princess Sophia*, 35 F. (2d) 736, 739 (W. D. Wash.), affirmed, 61 F. 2d 339, 354 (C. A. 9), certiorari denied *sub nom. Brace* v. *Canadian Pacific Ry. Co.*, 288 U. S. 604; *In re Agwi Navigation Co.*, 89 F. 2d 11, 12 (C. A. 2).

[17] The sixty-day waiting period is not so long as to deprive petitioner of a reasonable time within which to file his claim. *Fox* v. *Alcoa S. S. Co.*, 143 F. 2d 667, 668 (C. A. 5), cf. *Nathan* v. *Equitable Trust Co.*, 250 N. Y. 250, 253.

## CONCLUSION

For the reasons stated above, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

PHILIP B. PERLMAN,
*Solicitor General.*

HOLMES BALDRIDGE,
*Assistant Attorney General.*

PAUL A. SWEENEY,
LEAVENWORTH COLBY,
HERMAN MARCUSE,
*Attorneys.*

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## APPENDIX

1. The Clarification Act of March 24, 1943, 57 Stat. 45, 50 U. S. C. App. 1291, provides in pertinent part as follows:

> * * * (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of

employees of contractors with the United States and certain other persons or reimbursement therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seaman were employed on a privately owned and operated American vessel. Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration. Rights of any seaman under the Social Security Act, as amended by subsection (b) (2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Administration" and "Administrator, War Shipping Administra-

tion" shall be deemed to include the United States Maritime Commisison with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or sub-chartered to other agencies or departments of the United States.

2. Prior to its amendment by the Act of December 13, 1950, c. 1136, 64 Stat. 1112, 46 U. S. C., Supp. IV, 745, Sec. 5 of the Suits in Admiralty Act, 41 Stat. 525, as amended by the Act of June 30, 1932, 47 Stat. 420, 46 U. S. C. 745, provided in pertinent part as follows:

> suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided*, That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; all other suits hereunder shall be brought within two years after the cause of action arises * * *

Section 5 of the Suits in Admiralty Act now reads in pertinent part:

> That suits as herein authorized may be brought only within two years after the cause of action arises * * *

3. General Order 32 of the War Shipping Administration, issued April 22, 1943 (8 F. R. 5414, 46 CFR §§ 304.20–304.29) provides in pertinent part as follows:

> § 304.20. *Statutory provisions.* Officers and members of crews (hereinafter referred to as "seamen") employed on

United States or foreign flag vessels owned by or under bareboat charter to the War Shipping Administration and operated by an Agent under a General Agency form of Service Agreement, with respect to the claims hereinafter specifically enumerated, are given all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on American flag vessels privately owned and operated. Under such act, court action (a) may not be instituted to enforce such a claim until it shall have been administratively disallowed, in whole or in part, and (b) must be brought pursuant to the Suits in Admiralty Act.

304.21. *Claims which must be submitted for allowance prior to suit.* Claims, unless covered by the Social Security Act or laws administered by the Public Health Service, must be submitted for allowance prior to instituting court action thereon in cases of death, injury, illness, maintenance and cure, loss of effects, detention, repatriation, or claims arising therefrom; in cases relating to the collection of wages and bonuses and the making of allotments, when made against the United States of America, the War Shipping Administration, the Administrator thereof, or any other person for whom the United States of America or War Shipping Administration is responsible; in cases arising under the War Shipping Administration Crew Life and Injury Policy, the Second Seamen's War Risk Policy, and those arising under other Decisions of the Maritime War Emergency Board, in so far as such claims are made against the War Shipping Administration, provided they are made by or on behalf of

seamen who, at the time such claims arose, were employees of the United States through the War Shipping Administration, or by or on behalf of their surviving dependents or beneficiaries or legal representatives.

§ 304.22 *Time of accrual.* Sections 304.20 to 304.29 apply to any claim specified in § 304.21 which:

(a) Arose on or after March 24, 1943; or

(b) Accrued on or after October 1, 1941, and prior to March 24, 1943, if the seaman or his surviving dependent or beneficiary or legal representative elects, as provided by §§ 304.28 and 304.29, to enforce such claim in the same manner as it would be enforced if it arose after the date of the enactment of Public Law 17—78th Congress (57 Stat. 45).

§ 304.23 *Court action, condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative, having a claim under the provisions of §§ 304.21 and 304.22, shall commence a court action for the enforcement of such claim, unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in §§ 304.24 and 304.25 and has been administratively disallowed by the person or agency with whom it was so filed.

§ 304.24. *Claim, contents.* The claim need not follow any particular form, but it shall be in writing. It shall contain such particulars as are reasonably necessary as a basis for the allowance or administrative disallowance of such claim and should include, with respect to the seaman in question, his home address, date of birth, place

of birth, certificate of identification number, as well as all the facts and circumstances leading up to and surrounding the happening of the event out of which it is alleged the claim arose.

§ 304.25. *Claims, with whom filed.* Claims based upon any decision of the Maritime War Emergency Board or any insurance policy issued by the War Shipping Administration, excluding claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the Chief Adjuster, Division of Wartime Insurance, War Shipping Administration, 99 John Street, New York City, or such other agencies or persons as may be designated by the Chief Adjuster for the purpose of determining the allowance or disallowance of such claim. All other claims, including claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the General Agent of the vessel with respect to which such claims arose, or such Agent's Berth sub-agent to which the former may refer the claim for handling.

§ 304.26. *Claim, when presumed administratively disallowed.* If the person or agency with whom the claim is filed, in accordance with the directions contained herein, fails to notify the claimant in writing of a determination upon such claim, within sixty days following the date of filing thereof, the claim shall be presumed to have been administratively disallowed, and the claimant shall be entitled to enforce his claim by court action.

§ 304.27 *Administrative disallowance, notice of.* In those cases in which the person or agency to whom the claim has been re-

ferred, determines that it shall be administratively disallowed, in whole or in part, such person or agency shall mail to the last known address of the claimant, or deliver or cause to be delivered personally to the latter or his agent, a letter in substantially the following form:

Dear Sir:

Reference: (Name of claimant—Name of vessel)

This is to certify that—(Claimant)—filed a written claim with the undersigned on—(Date received)—; that the claim involved or arose out of (here insert facts sufficient to identify the claim); that such claim has been administratively disallowed, in accordance with the rules and regulations prescribed by the Administrator under the provisions of section 1 (a) of Public Law 17—78th Congress (H. R. 133).